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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(El Dorado)

In re S.J., a Person Coming Under the
Juvenile Court Law.

EL DORADO COUNTY DEPARTMENT OF HUMAN
SERVICES,

Plaintiff and Respondent,

v.

S.J.,

Defendant and Appellant.

C064223

(Super. Ct. No.
SDP20080022)

The mother of minor S.J. appeals following a permanent plan hearing. The juvenile court denied mother's modification request for additional reunification services and ordered a plan

of long-term foster care for the minor. (Welf. & Inst. Code, §§ 366.26, 395.)¹

Mother contends the juvenile court abused its discretion, arguing that she demonstrated a change of circumstances in seeking the treatment recommended in her psychological evaluations. However, based on evidence that mother required long-term mental health treatment before she could safely parent her children, that mother abused the minor, and that the minor also had mental health concerns, we conclude that the juvenile court did not abuse its discretion. We will affirm the orders of the juvenile court.

FACTUAL AND PROCEDURAL BACKGROUND

In June 2008, the El Dorado County Department of Human Services (the Department) filed a juvenile dependency petition concerning the nearly 14-year-old minor and her siblings -- Chr.R. (age 10), Cha.R. (age nine), and C.H. (age three) -- based on mother's physical abuse of Chr.R., mother's drug use, and the fact that there had been numerous prior referrals on the family. The family had an extensive child welfare history, with 21 referrals extending back 14 years and two prior dependency cases, including one in which the minor and two of her siblings spent almost two years in foster care.

The allegations in the petition were sustained, and in September 2008, the juvenile court denied mother reunification

¹ Undesignated statutory references are to the Welfare and Institutions Code.

services based on her history of chronic drug abuse. (§ 361.5, subd. (b)(13).) The court extended services to the children's fathers.

Two months later, mother filed a request for modification, alleging she had completed a 30-day inpatient program and seeking reunification services. The juvenile court granted mother's request and approved a case plan requiring her to participate in an array of services.

Meanwhile, a psychological evaluation of the minor conducted by Dr. David Stewart found the minor was "in the process of developing a severe personality disorder" which included a major depressive condition and a "strong suicidal tendency." The minor reported that she had been physically abused by mother for many years, and she had been cutting herself since she was 12 years old, which was prior to her most recent removal from mother. Mother had stopped physically abusing the minor by the time she was 13 years old, at which time mother began abusing one of the minor's siblings. According to the evaluation, the minor felt "attached to and defensive of" mother "and supportive of abusing the [sibling]," setting up a cycle where the minor was likely to abuse her own children if she did not receive intervention.

As of March 2009, mother was complying with her case plan for the most part, but concerns about her persisted. There was evidence that she was having unsupervised contact with some of the children in violation of the juvenile court's order. She attempted to do services and use providers other than those

identified by the Department. She also told the father of two of the children that he needed to "get rid" of the attorney for the children or she would assert allegations against him.

At a review hearing, the juvenile court ordered a psychological evaluation of mother and continued her services over the objection of the minor's attorney.

The evaluation, which was conducted by Dr. Stewart, found mother to be "seriously psychologically disturbed in both acute symptoms and in long-term personality characteristics." He diagnosed her as having borderline personality, which "affect[ed] her thinking in relation to potential child abuse and neglect." Mother did not accept any responsibility for the minor's mental health problems, maintaining that the minor was cutting herself because she could not come home "and because a boy broke her heart." Dr. Stewart recommended against reunifying mother with the minor, because the basis for the minor's view that she now had a positive relationship with mother was "their mutual agreement that the younger sister should become their joint target." If services were continued, Dr. Stewart recommended intensive medication management and therapy with a highly skilled therapist. He concluded: "I cannot over[-]emphasize that although [mother] is capable of presenting as being socially acceptable, her underlying psychology is very seriously and dangerously flawed."

A second psychological evaluation of mother was ordered at the request of the Department. While the second evaluation was

pending, the minor was hospitalized on a section 5150² hold, after she cut her wrists and carved "kill me" on her inner arm.

The second evaluation, which was performed by Dr. Eugene P. Roeder, also found "significant evidence of a severe mental disorder." According to Dr. Roeder, mother would be able to parent an adolescent only if that child were "relatively high functioning" and "enjoyed a positive and healthy relationship" with her, and if mother was in treatment and stabilized. He later clarified that, based on the information he had about the minor, she did qualify as a "high functioning adolescent." As in the first evaluation, Dr. Roeder offered a "guarded prognosis," stating that mother would require "frequent and regular mental health intervention" involving "long[-]term efforts" in order for her to be capable of focusing on her children's needs.

At the review hearing in August 2009, Dr. Roeder testified it would take substantially longer than six months, "[i]f at all," before any of the children could be returned to mother's care, even with counseling and medication. Dr. Stewart also testified, reiterating that the prognosis for mother to be able to reunify with any of the children was poor, and that unsupervised visits with the minor could not take place for at

² Section 5150 provides that a person may be detained in a mental health facility for 72 hours who, as a result of a mental disorder, is a danger to herself or others or is gravely disabled.

least nine months to a year, even if they were engaged in therapy.

Following testimony, the Department moved to modify the juvenile court's previous order granting services to mother, requesting that the court bypass services based on mother's mental health condition. (§ 361.5, subd. (b)(2).) The court granted the Department's motion, finding mother had a mental disorder that rendered her "incapable of taking care of her children in the foreseeable future." Pursuant to section 366.26, a hearing was scheduled to select and implement a permanent plan for the minor.

In December 2009, mother filed a request to modify the juvenile court's order terminating her services with the minor. She alleged as changed circumstances that she had been receiving counseling and medication since the previous hearing. Mother's request was set for a hearing two weeks later, on the same day as the hearing to select and implement a permanent plan for the minor.

At the hearing, a psychiatrist hired by mother testified that she agreed with the diagnosis in the two previous psychological evaluations but she believed some of mother's symptoms could respond to short-term treatment with medication and therapy. She also felt that the medication mother was taking was helping her. It was her opinion that a person with mother's diagnosis could care for children and that there was a probability that mother's children could be returned to her

within six months with treatment and continued abstinence from drugs.

Mother made an offer of proof that she had maintained sobriety since June 2008 and had participated in intensive outpatient treatment, anger management, and one-on-one counseling since the previous hearing. Additionally, a letter from the minor was presented to the juvenile court, in which the minor stated she wanted to live with mother and that she "could sur[v]ive" the two-and-one-half years until she was "18 and out of the house." The minor also asked that her attorney be replaced and specified a particular attorney she wanted to represent her. The social worker suspected that mother had influenced the minor's requests because mother had made numerous previous requests for attorney changes for her children.

In a written ruling, the juvenile court denied mother's request for additional reunification services. The court noted it was "commendable" that mother had engaged in extensive services and showed a sincere desire to have her children returned to her, but it found there had not been a significant change of circumstances and there was no substantial probability that mother's children could ever be returned to her care. The court found that the minor was not adoptable and ordered a permanent plan of foster care.

DISCUSSION

I

Mother contends the juvenile court erred by denying her request for additional services. We disagree.

Section 388, subdivision (a), provides in part: "Any parent . . . may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court . . . for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court."

Section 388 permits a modification of a dependency order if a change of circumstance or new evidence is shown and if the proposed modification is in the best interests of the child. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 526.) "Even after the focus has shifted from reunification, the scheme provides a means for the court to address a legitimate change of circumstances while protecting the child's need for prompt resolution of his custody status." (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) The petitioning party has the burden of proof by a preponderance of the evidence. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 48.)

The best interests of the child are of paramount consideration when a modification petition is brought after termination of reunification services. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) In assessing the best interests of the child at this juncture, the juvenile court looks not to the parent's interests in reunification but to the needs of the child for permanence and stability. (*In re Marilyn H., supra*, 5 Cal.4th at p. 309.) "[W]hen a child has been placed in foster care because of parental neglect or incapacity, after an

extended period of foster care, it is within the court's discretion to decide that a child's interest in stability has come to outweigh the natural parent's interest in the care, custody and companionship of the child." (*In re Jasmon O.* (1994) 8 Cal.4th 398, 419.)

A modification petition "is addressed to the sound discretion of the juvenile court and its decision will not be disturbed on appeal in the absence of a clear abuse of discretion." (*In re Jasmon O., supra*, 8 Cal.4th at p. 415.) "It is rare that the denial of a section 388 motion merits reversal as an abuse of discretion" (*In re Kimberly F., supra*, 56 Cal.App.4th at p. 522.)

Applying these principles to the circumstances before us, we conclude that the juvenile court did not abuse its discretion in denying mother's request to reinstate reunification services with the minor. Based on the evidence before it -- including two psychological evaluations that found mother would require long-term treatment if she had any hope of safely parenting any of her children -- the court was warranted in concluding that four months of medication and counseling did not constitute a significant change of circumstances. Furthermore, based on the minor's lengthy exposure to abuse by mother and the seriousness of the minor's own mental health concerns, there was ample support for the conclusion that it would not be in the minor's best interest to continue to pursue reunification with mother.

Mother argues that she demonstrated a change of circumstances "by persevering in an effort to obtain the

treatment recommended" in her psychological evaluations. But although mother actively pursued treatment following the termination of services, it was not a failure to engage in services that led the juvenile court to discontinue reunification efforts. Rather, the court terminated services based on the evidence that mother suffered from a mental illness that rendered her incapable of benefitting from services such that she could safely parent the minor or her siblings. Although mother's new psychiatrist testified that some of her symptoms could respond to short-term treatment so that she could safely assume custody of her children, the court was not required to adopt these conclusions in light of two recent psychological evaluations to the contrary.

Mother also maintains it was in the minor's best interest to provide her another opportunity to reunify because the minor was not adoptable. We conclude there was ample evidence to support the determination that, despite the unavailability of adoption for the minor, pursuing reunification would not be in the minor's best interest.

As already discussed, the minor was physically abused by mother for years and had serious psychological concerns. Nothing in the record indicates that mother acknowledged her responsibility for the minor's condition. The minor's psychological evaluation described a potentially toxic relationship between her and mother, which was "based on their mutual agreement that the younger sister should become their joint target." The statement in the minor's letter to the court

that she "could sur[v]ive" two-and-one-half years in mother's custody until she reached majority was a telling assessment of mother's ability to parent the minor. Thus, the minor's avowed desire to live with mother is not compelling evidence that her best interests would be served by pursuing this outcome.

Finally, although foster care does not provide permanency in the way adoption does, it can provide stability. Here, the minor's foster home, where she had lived with one of her siblings since shortly after their removal from mother, was providing her much-needed structure and stability. The minor could remain there as long as she was in the foster care system. Under the circumstances, the juvenile court did not abuse its discretion in declining to prolong uncertainty for the minor in order to pursue the unlikely possibility that, at some point, mother would be able to reunify with her.

For all of these reasons, we conclude the juvenile court acted within its discretion when it denied mother's request for modification.

II

Mother also asserts that the juvenile court erroneously relied on section 366.22, subdivision (b) when it declined to reinstate reunification services. This claim, too, is without merit.

Section 366.22, subdivision (b) provides that, at an 18-month review hearing, the juvenile court may continue services for up to six months under limited circumstances if it finds

there is a substantial probability the child can be returned to the parent within the extended time period.

At the hearing on mother's modification request, her attorney cited section 366.22 to rebut an argument that it would be improper to offer mother additional services because the 18-month limit for reunification was about to expire. Consequently, in its written ruling, the juvenile court addressed mother's argument "that pursuant to . . . [section] 366.22[, subdivision] (b)[,] she should be offered six more months of services," stating that, even under that statute's rubric, mother did not meet the criteria. Ultimately, the court ruled that there was "not a significant change in circumstances" and "no substantial probability that [the] children could ever be returned to [mother's] care." Thus, although the court considered the provisions of section 366.22 at mother's urging, its decision to deny her modification request was based on its conclusion that her circumstances had not changed sufficiently

to warrant a modification of its previous order. As already discussed, no abuse of discretion is evinced by this ruling.

DISPOSITION

The juvenile court's orders are affirmed.

_____, MAURO, J.

We concur:

_____, NICHOLSON, Acting P. J.

_____, BUTZ, J.